

WEST VIRGINIA
SECRETARY OF STATE

KEN HECHLER

ADMINISTRATIVE LAW DIVISION

FORM #6

Do Not Mark In This Box

FILED

MAY 1 3 35 PM '98

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE RULE AUTHORIZED
BY THE WEST VIRGINIA LEGISLATURE.**

AGENCY: Division of Environmental Protection, Office of Air Quality TITLE NUMBER: 45

AMENDMENT TO AN EXISTING RULE: YES , NO

IF YES, SERIES NUMBER OF RULE BEING AMENDED: 25

TITLE OF RULE BEING AMENDED: "To Prevent and Control Air Pollution
from Hazardous Waste Treatment, Storage, or Disposal Facilities"

IF NO, SERIES NUMBER OF NEW RULE BEING PROPOSED: _____

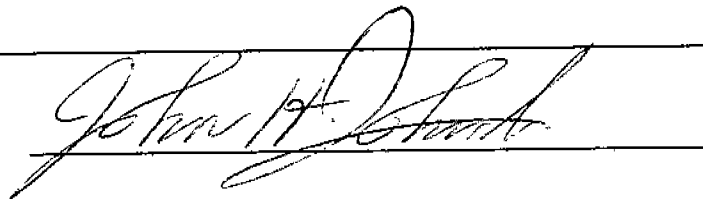
TITLE OF RULE BEING PROPOSED: _____

THE ABOVE RULE HAS BEEN AUTHORIZED BY THE WEST VIRGINIA LEGISLATURE.

AUTHORIZATION IS CITED IN (house or senate bill number) H. B. 4136

SECTION W. Va. Code §64-3-1 , PASSED ON March 14, 1998

THIS RULE IS FILED WITH THE SECRETARY OF STATE. THIS RULE BECOMES EFFECTIVE ON
THE FOLLOWING DATE: May 1, 1998



\$4.20



BUREAU OF ENVIRONMENT
10 McJunkin Road
Nitro, WV 25143-2506

CECIL H. UNDERWOOD
GOVERNOR

May 1, 1998

Ms. Judy Cooper
Director, Administrative Law Division
Office of the Secretary of State
Capitol Complex
Charleston, West Virginia 25305

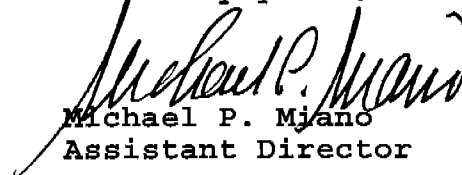
RE: 45CSR25 - "To Prevent and Control Air Pollution From
Hazardous Waste Treatment, Storage, or
Disposal Facilities"

Dear Ms. Cooper:

This is to advise that I am giving approval to file the
above-referenced rule with your office as a final rule authorized
by HB 4136, signed by Governor Underwood April 2, 1998.

Your cooperation in this regard is very much appreciated.
If you have any questions or require additional information,
please feel free to contact Carrie Chambers at 759-0515.

Sincerely yours,


Michael P. Miano
Assistant Director

JEC:cc

Attachment

cc: Karen Watson

LEGISLATIVE HISTORY ABSTRACT
45CSR25

**TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS
WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES**

Bureau of Environment
Division of Environmental Protection
Office of Air Quality
House Bill 4136 Section 64-3-1

06/17/97 Filed Notice of Public Hearing with Secretary of State.

06/17/97 Initial Filing with Legislative Rule-Making Review Committee.

07/21/97 Held Public Hearing.

07/21/97 End of Public Comment Period.

08/01/97 Agency Approved Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

11/18/97 Rule Approved by Legislative Rule-Making Review Committee with Modifications.

12/02/97 Modified Rule Filed with Secretary of State and Legislative Rule-Making Review Committee.

03/14/98 Passed the West Virginia Legislature.

04/02/98 Approved by the Governor.

05/01/98 Rule Final Filed with Secretary of State.

05/01/98 Effective Date of Rule.

FILED

45CSR25

MAY 1 3 35 PM '98

**TITLE 45
LEGISLATIVE RULE
DIVISION OF ENVIRONMENTAL PROTECTION
OFFICE OF AIR QUALITY**

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

**SERIES 25
TO PREVENT AND CONTROL AIR POLLUTION FROM HAZARDOUS WASTE
TREATMENT, STORAGE, OR DISPOSAL FACILITIES**

§45-25-1. General.

1.1. Scope.

1.1.a. The intent and purpose of this rule is to establish a program of regulation over air emissions from the treatment, storage and disposal of hazardous wastes in order to achieve and maintain such levels of air quality as will protect the public health and safety and the environment from the effects of improper, inadequate, or unsound treatment, storage, or disposal of hazardous wastes. Further, all persons engaged in the treatment, storage, or disposal of hazardous waste shall give careful consideration to the effects of the resultant emissions on the air quality or the areas affected by such any hazardous waste or constituent thereof in such quantities as to cause ambient air concentrations which may be injurious to human health or welfare which would interfere with the enjoyment of life or property.

1.1.b. The requirements of this rule apply to all owners and operators of hazardous waste treatment, storage, and disposal facilities as provided in the federal rules that are incorporated by reference herein.

1.1.c. Neither compliance with the provisions of this rule nor the absence of specific language to cover particular situations constitutes approval or implies consent or condonement of any emission which is released in any locality in such manner or amount as to cause or contribute to statutory air pollution. Neither does it exempt nor excuse anyone from complying with other applicable laws, ordinances, regulations, or orders of governmental entities having jurisdiction over hazardous waste treatment, storage or disposal facilities.

1.1.d. This rule is promulgated pursuant to W.Va. Code §§22-18-1 et seq., and §§22-5-1 et seq. Recognizing that each Chapter has its own enforcement sections, it is the intent of the Director that enforcement shall be implemented in accordance with W. Va. Code §§22-18-1 et seq., where practicable.

1.1.e. Permit applications filed pursuant to this rule shall be processed in accordance with the permitting procedures as set forth in W. Va. Code §§22-18-1 et seq., and this rule.

- 1.2. Authority. -- W.Va. Code §§22-5-1 et seq. and §§22-18-1 et seq.
- 1.3. Filing Date. -- May 1, 1998
- 1.4. Effective Date. -- May 1, 1998
- 1.5. Incorporation By Reference.

1.5.a. This rule incorporates by reference the provisions contained in the Code of Federal Regulations as listed in Table 25-A. Unless otherwise indicated, where reference to a federal regulation or standard appears in this rule, such regulation or standard will for purposes of this rule, be construed as that version which was in effect as of July 1, 1997.

1.5.b. This rule also incorporates by reference the provisions contained in 47 CSR 20, effective June 1, 1997.

§45-25-2. Definitions.

2.1. "Air Pollutants" means solids, liquids, or gases which, if discharged into the air, may result in statutory air pollution.

2.2. "Air Pollution", 'statutory air pollution' has the meaning ascribed to it in W. Va. Code §22-5-2.

2.3. "Air Pollution Control Equipment" means any equipment used for collecting or converting hazardous waste emissions for the purpose of preventing or reducing emissions of these materials into the open air from hazardous waste treatment, storage, or disposal facilities.

2.4. "BACT", 'Best Available Control Technology' means an emissions limitation based on the maximum degree of reduction for each pollutant which would be emitted from any hazardous waste treatment, storage or disposal facility which the Director, on a case-by-case basis, taking into account energy, environmental and economic impacts and other costs, determines is achievable for such facility through application of production processes or available methods, systems, or techniques. If the Director determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

2.5. "CAA" means the federal Clean Air Act, as amended; 42 U.S.C. §7401 et seq.

2.6. "CFR" means the Code of Federal Regulations published by the Office of the Federal Register, National Archives and Records Service, General Services Administration.

2.7. "CWA" means the Clean Water Act (formerly referred to as the Federal Water Pollution Control Act), Public Law 92-500, as amended by Public Law 95-217 and Public Law 95-576; 33 U.S. C. §1251 et seq.

2.8. "Director" means the Director of the West Virginia Division of Environmental Protection or such other person to whom the Director has delegated authority or duties pursuant to W. Va. Code §22-1-6 or §22-1-8.

2.9. "Division of Environmental Protection" or "DEP" means that Division of the West Virginia Division of Environmental Protection which is created by the provisions of W. Va. Code §§22-1-1 et seq.

2.10. "EPA" means the United States Environmental Protection Agency.

2.11. "Facility mailing list" means the mailing list for a facility maintained by EPA in accordance with 40 CFR 124.10(c)(1)(ix).

2.12. "Infectious Medical Waste" shall have the meaning ascribed to it in 64 CSR 56 "Infectious Medical Waste", (June 11, 1993), promulgated by the Division of Health.

2.13. "Particulate Matter" means any material, except uncombined water, that exists in a finely divided form as a liquid or solid.

2.14. "Pathological Waste Incinerator" means an incinerator used to thermally treat infectious medical waste.

2.15. "RCRA" means the federal Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act, as amended; 42 U.S.C. §6901 et seq.

2.16. "Steady State" means that all conditions at all points in the thermal treatment process are in stable, normal operating conditions.

Other words or phrases not herein defined and used in this rule shall have the meaning as ascribed in W. Va. Code §§22-5-1 et seq., or W. Va. Code §§22-18-1 et seq., or 33 CSR 20 "Hazardous Waste Management Regulations" governing the State Hazardous Waste Management Act.

§45-25-3. Adoption By Reference.

3.1. Definitions, lists, tables, appendices, conditions, or requirements from 33 CSR 20 "Hazardous Waste Management Rule", effective June 1, 1997 are hereby adopted by reference.

3.1.a. In case of a conflict between the Office of Air Quality and the Office of Waste Management as to whether a material is a waste and if so, whether the material is a hazardous waste, the Director has final administrative authority to resolve the conflict.

3.2. The provisions contained in the Code of Federal Regulations (effective on July 1, 1997, except as otherwise provided by section 1.5 of this rule), as listed in Table 25-A, are hereby adopted by reference, with the following modifications:

3.2.a. Whenever the term "United States" is used it shall also mean the State of West Virginia.

3.2.b. Whenever the terms "Administrator" or "Regional Administrator", "The Assistant Administrator for Solid Waste and Emergency Response" or "Director" is used, the term means the Director of the West Virginia Division of Environmental Protection.

3.2.c. Whenever the term "Environmental Protection Agency" is used in 40 CFR 266, the term also means the West Virginia Division of Environmental Protection.

3.2.d. The distance provisions of 40 CFR 265.382 apply only to the open burning or open detonation of military explosives in a manner that presents an uncontrolled fragment release hazard. The applicable distance provisions of the American Table of Distances for Commercial Explosives, effective June 19, 1991, and of the Department of Defense Contractors Safety Manual for Ammunition and Explosives (DOD 4145.26-M), as amended April 11, 1988, apply otherwise.

§45-25-4. Facility Requirements.

4.1. Owners and operators of hazardous waste treatment, storage, and disposal facilities regulated by the provisions of this rule shall maintain a listing of all permits or construction approvals received or applied for under any of the following programs and their counterpart programs administered by the State, where appropriate:

4.1.a. Hazardous Waste Management Program under RCRA and 33 CSR 20;

4.1.b. Prevention of Significant Deterioration (PSD) Program under 45 CSR 14 or the Federal Clean Air Act;

4.1.c. Nonattainment program under West Virginia DEP, Office of Air Quality or the Federal Clean Air Act and 45 CSR 19;

4.1.d. National Emission Standards for Hazardous Pollutants (NESHAP) preconstruction approval under 45 CSR 15 or the Federal Clean Air Act;

4.1.e. Standards of Performance for New Stationary Sources under 45 CSR 16 or the Federal Clean Air Act; and

4.1.f. Other relevant air pollution control permits including local permits.

4.2. Owners and operators of hazardous waste treatment, storage and disposal facilities covered under this rule shall comply with the personnel training requirements as specified by 40 CFR 264.16. An outline of the training program and a description of how the training program is designed to meet actual job tasks must be submitted to the Director with Part B of the permit application.

4.3. Owners and operators of hazardous waste tanks, containers, surface impoundments, landfills, waste piles, land treatment, miscellaneous units, thermal treatment units, incinerators, and boiler and industrial furnace facilities must design, construct, maintain, and operate such facilities to minimize the possibility of a fire, explosion, or any unplanned, sudden, or non-sudden release of hazardous waste constituents to the air which could threaten human health or the environment.

4.4. Owners and operators of hazardous waste management facilities that treat, store, or dispose of ignitable or reactive wastes, or mix incompatible waste or incompatible wastes and other materials, must prevent reactions which:

4.4.a. Produce uncontrolled toxic mists, fumes, dust or gases in sufficient quantities to threaten human health or the environment, and

4.4.b. Produce uncontrolled flammable fumes or gases in sufficient quantities to pose a risk of fire or explosion.

4.5. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a container in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

4.6. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a tank in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subparts AA, BB and CC.

4.7. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a surface impoundment in accordance with the applicable air emission standard requirements of 40 CFR 264 and 265 including but not limited to subpart CC.

4.8. The owners and operators of the hazardous waste treatment, storage and disposal facilities shall manage all hazardous waste placed in a miscellaneous unit in accordance with the applicable air pollution standard requirements of 40 CFR 264 including but not limited to subparts AA, BB, and CC.

4.9. A hazardous waste pile must be fully enclosed or otherwise designed to prevent

dispersal of the waste by wind.

4.10. Hazardous waste landfills must be covered or otherwise managed to prevent wind dispersal of the waste.

4.11. All landfills, surface impoundments, and land treatment facilities shall be located, designed, constructed, operated, maintained, and closed in a manner that will assure protection of human health and the environment. Protection of human health and the environment shall include prevention of adverse effects on air quality considering:

4.11.a. The volume and physical and chemical characteristics of the waste in the facility, including its potential for volatilization and wind dispersal;

4.11.b. The existing quality of the air, including other sources of contamination and their cumulative impact on the air;

4.11.c. The potential for health risks caused by human exposure to waste constituents;

4.11.d. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

4.11.e. The potential for interference with the enjoyment of life or property; and

4.11.f. The persistence and permanence of such potential adverse effects.

4.12. Owners and operators of hazardous waste treatment, storage, or disposal facilities shall utilize best available control technology ("BACT") to limit the discharge of hazardous waste constituents to the atmosphere during:

4.12.a. Process turn-arounds;

4.12.b. Cleaning of process equipment;

4.12.c. Planned process shutdowns; and

4.12.d. Tank truck, railroad tank car, and barge cleaning.

4.13. The Director may, on a case-by-case basis, establish performance standards for hazardous waste incinerators for control of emissions of metals, hydrogen halides, and elemental halogen, based on a finding that such standards are necessary to limit the emission rates of these constituents to levels which do not pose an unacceptable risk to human health and environment. The Director may require the following data from the permit applicant:

4.13.a. Emissions of POHCs, hazardous combustion by-products, metals and hydrogen

halides, including:

4.13.a.1. Mass emission rates from the stack, and

4.13.a.2. Concentration in the gas stream exiting the stack; and

4.13.b. Air dispersion estimates for those substances, including:

4.13.b.1. Meteorological data, and

4.13.b.2. Description of the air dispersion models, and

4.13.b.3. Assumptions underlying the air dispersion models used; and

4.13.c. Expected human and environmental exposure, including:

4.13.c.1. Topographic considerations,

4.13.c.2. Population distributions,

4.13.c.3. Population activities, and

4.13.c.4. Modes, intensity, and duration of exposure; and

4.13.d. Consequences of exposure, including:

4.13.d.1. Dose-response curves for carcinogens,

4.13.d.2. Health effects based on human or animal studies for other toxic constituents,

4.13.d.3. Potential for accumulation of toxic constituents in the human body, and

4.13.d.4. Statements of expected risk to individuals or populations.

4.14. Emergency Permit. Notwithstanding any other provision in 40 CFR 270.61, in the event the Director finds an imminent and substantial danger to human health or the environment, the Director may issue a temporary permit to a facility to allow treatment, storage, or disposal of hazardous waste at a non-permitted facility, or hazardous waste not covered by the permit for a facility with an effective permit. This emergency permit:

4.14.a. May be oral or written. If oral, it shall be followed within five (5) days by written emergency permit;

4.14.b. Shall not exceed ninety (90) days in duration;

4.14.c. Shall clearly specify the hazardous wastes to be received, and the manner and location of the treatment, storage, or disposal;

4.14.d. May be terminated by the Director at any time without prior notice if it is determined that termination is appropriate to protect human health or the environment; and

4.14.e. Shall be accompanied by public notice as described under Section 7 of this rule and shall include the following:

4.14.e.1. Name and address of the office granting the emergency authorization,

4.14.e.2. Name and location of the permitted hazardous waste management facility,

4.14.e.3. A brief description of the wastes involved,

4.14.e.4. A brief description of the action authorized and reasons for authorizing it,

4.14.e.5. Duration of the emergency permit; and

4.14.f. Shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this rule.

4.15. Pathological Waste Incinerators. The owner and operator of a pathological waste incinerator is not subject to the requirements of this regulation. However, mixtures of infectious medical waste and hazardous waste listed in 40 CFR 261 Subpart D are subject to the requirements of this rule and the owner and operator of such a facility shall design, construct and operate the facility in accordance with all other applicable regulations promulgated by the Director, including, but not limited to, 45 CSR 6 and 45 CSR 13.

§45-25-5. Exclusion and Exemptions.

5.1. Wastes and/or materials excluded in 33 CSR 20, are also excluded from the requirements of this rule.

5.2. Except for recyclable materials exempt pursuant to Section 3 of 33 CSR 20, hazardous wastes that are stored prior to recycling are subject to all applicable provisions of Section 4 of this rule.

§45-25-6. Confidential Information.

6.1. Any records, reports, or information and any permit, permit applications, and related documents within the Director's possession shall be available to the public for inspection and

copying: provided, however, that upon satisfactory showing to the Director that such records, reports, permit documentation, or information, or any part thereof would, if made public, divulge methods or processes, or activities, entitled to protection as trade secrets, the Director shall consider, treat, and protect such records as confidential pursuant to W. Va. Code §22-18-1 et seq., and §22-5-1 et seq.

§45-25-7. Public Participation.

Public notice of the preparation of a draft permit shall be given by the methods contained in 33 CSR 20 Section 11, and 40 CFR 270.2, 270.14, 270.30, 270.62, and 270.66.

§45-25-8. Application Fees.

8.1. Any person who applies for a permit for the construction and/or operation of an air emitting hazardous waste treatment, storage, or disposal facility shall submit as part of said application a money order or cashier's check payable to the "Air Pollution Control Fund" of the State Treasury. Such fee shall be determined by the schedule set forth below:

ACTIVITY FEES

a.	Hazardous Waste Management Facilities	
	Treatment design capacity more than 1,000 ton/yr	\$5,000
	Treatment design capacity less than 1,000 ton/yr	\$5,000
b.	Major Modifications or Renewals of Permits for Hazardous Waste Management Facilities	\$1,000

All fees required under this section shall be in addition to fees required under any other rule of the West Virginia Division of Environmental Protection.

§45-25-9. Inconsistency Between Rules.

In the event of any inconsistency between this rule and any other rule of the West Virginia Division of Environmental Protection, such inconsistency shall be resolved by the determination of the Director and such determination shall be based upon the application of the more stringent provision, term, condition, method and rule.

45CSR25

TABLE 25-A

Item No.	CFR No.		Part No.		Subpart No.		Title
1.	40 CFR	-	264, 265	-	O	-	Incinerator
2.		-	270.19	-	B	-	Specific Requirements for Incinerators
3.		-	270.62	-	F	-	Hazardous Waste Incinerator Permits
4.	40 CFR	-	264	-	X	-	Miscellaneous Units
5.		-	270.23	-	B	-	Specific Requirements for Miscellaneous Units
6.	40 CFR	-	264, 265	-	AA	-	Air Emission Standards for Process Vents
7.		-	270.24	-	B	-	Specific Requirements for Process Vents
8.	40 CFR	-	264, 265	-	BB	-	Air Emission Standards for Equipment Leaks
9.		-	270.25	-	B	-	Specific Requirements for Equipments Leaks
10.	40 CFR	-	264, 265, 270	-	CC	-	Organic Air Emission Standards for Tanks Surface Impoundments, and Containers
11.	40 CFR	-	265	-	P	-	Thermal Treatment
12.	40 CFR	-	266	-	H	-	Hazardous Waste Burned in Boilers and Industrial Furnaces

Item No.	CFR No.	Part No.	Subpart No.	Title
13.		- 270.22	- B	- Specific Requirements for Boilers and Industrial Furnaces Burning Hazardous Wastes
14.		- 270.66	- F	- Permits for Boiler and Industrial Furnaces Burning Hazardous Waste
15.	40 CFR	- 279.23	- C	- On-site Burning In Space Heater
16.		- 279.60 - 279.61 - 279.62 - 279.63	- G	- Standards for Used Oil Burners Who Burn Off-Specification Used Oil for Energy Recovery
17.		- 270.14(b)(22)	- B	- Part B application General Requirements
18.		- 270.30(m)	- B	- Information repository

0917
45-25

1 Bill-DEP, P

H. B. 4160

2

(By Delegates Hunt, Linch, Compton, Jenkins,

3

Faircloth and Riggs)

4

[Introduced January 30, 1998; referred to the

5

Committee on the Judiciary.]

6

7

8

9

10 A BILL to amend and reenact section one, article three,

11 chapter sixty-four of the code of West Virginia, one

12 thousand nine hundred thirty-one, as amended, relating

13 to authorizing the division of environmental

14 protection to promulgate a legislative rule relating

15 to the prevention and control of air pollution from

16 hazardous waste treatment, storage or disposal

17 facilities.

18 *Be it enacted by the Legislature of West Virginia:*

19 That section one, article three, chapter sixty-four of

20 the code of West Virginia, one thousand nine hundred

21 thirty-one, as amended, be amended and reenacted, to read

22 as follows:

23 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**

4160

1 **PROMULGATE LEGISLATIVE RULES.**

2 **§64-3-1. Division of environmental protection.**

3 (a) The legislative rule filed in the state register
4 on the thirtieth day of August, one thousand nine hundred
5 ninety-six, authorized under the authority of section six,
6 article eighteen, chapter twenty-two of this code, relating
7 to the division of environmental protection (hazardous
8 waste management, 33 CSR 20), is authorized.

9 (b) The legislative rule filed in the state register
10 on the twenty-ninth day of August, one thousand nine
11 hundred ninety-six, authorized under the authority of
12 section four, article five, chapter twenty-two of this
13 code, relating to the division of environmental protection
14 (standards of performance for new stationary sources
15 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

16 (c) The legislative rule filed in the state register
17 on the twenty-ninth day of August, one thousand nine
18 hundred ninety-six, authorized under the authority of
19 section four, article five, chapter twenty-two of this
20 code, relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 63, 45 CSR 34), is authorized.

23 (d) The legislative rule filed in the state register

1 on the twenty-eighth day of August, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section six, article seventeen, chapter twenty-two of this
4 code, modified by the division of environmental protection
5 to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 twenty-second day of October, one thousand nine hundred
8 ninety-six, relating to the division of environmental
9 protection (underground storage tank insurance trust fund,
10 33 CSR 32), is authorized.

11 (e) The legislative rule filed in the state register
12 on the twenty-ninth day of August, one thousand nine
13 hundred ninety-six, authorized under the authority of
14 section three, article one, chapter twenty-two of this
15 code, modified by the division of environmental protection
16 to meet the objections of the legislative rule-making
17 review committee and refiled in the state register on the
18 twentieth day of December, one thousand nine hundred
19 ninety-six, relating to the division of environmental
20 protection (WV/NPDES regulations for coal mining
21 facilities, 47 CSR 30), is authorized.

22 (f) The legislative rule filed in the state register
23 on the thirtieth day of August, one thousand nine hundred

1 ninety-six, authorized under the authority of section four,
2 article three, chapter twenty-two of this code, modified by
3 the division of environmental protection to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the twenty-first day
6 of February, one thousand nine hundred ninety-seven,
7 relating to the division of environmental protection
8 (surface mining and reclamation regulations, 38 CSR 2), is
9 authorized, with the following amendments:

10 "On page three, subsection 2.4, by striking out the
11 words "Coal seams commonly associated with such minerals
12 may include, but are not limited to Waynesburg, Washington,
13 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
14 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
15 Stockton Lewiston";

16 On page three, subsection 2.4, line eight, by striking
17 out the words "these seams are", and inserting in lieu
18 thereof the words "the seam is";

19 On page nine, subsection 2.43, line two, after the
20 word "highwall", by inserting the words "except in
21 operations where the entire upper horizon above the lowest
22 coal seam is proposed to be partly or entirely removed";

23 On page sixteen, subsection 2.95, line seven after

1 the "any", by inserting the word "substantial";

2 On page eighteen, subsection 2.108, line two, after
3 the word "stream." by adding the following: Examples
4 include wildlife ponds, settling basins and all ponds and
5 facilities or structures used for water treatment.;

6 On page nineteen, subsection 2.120, line three, by
7 striking the word "or" and inserting in lieu thereof the
8 word "and";

9 On page twenty-nine, subsection 3.2.e., after the word
10 "period" by striking the remainder of the subdivision
11 3.2.e.;

12 On page forty-nine, subsection 3.14.b.7., by striking
13 the entire paragraph;

14 On page forty-nine, subsection 3.14.b.8., by striking
15 the entire paragraph;

16 On page forty-nine, by renumbering the remaining
17 paragraphs;

18 On page fifty-one, subparagraph 3.14.b.14E, line one,
19 before the word "A", by inserting the words "If requested
20 by the Director";

21 On page fifty-one, subsection 3.14.b.15.B., by
22 striking the entire subparagraph, and inserting in lieu
23 thereof the following: 3.14.b.15.B. Surface water must be

1 diverted around or over the material by properly designed
2 and stabilized diversion channels which have been designed
3 using the best current technology to provide protection to
4 the environment or the health, welfare and safety of the
5 public. The channel shall be designed and constructed to
6 ensure stability of the remaining material, control
7 erosion, and minimize water infiltration into the remaining
8 material.;

9 On page seventy-two, subdivision 3.29.a, line five
10 after the word "IBR", by inserting the words "or where it
11 has been demonstrated to the satisfaction of the Director
12 that limited coal removal on areas immediately adjacent to
13 the existing permit is the only practical alternative to
14 recovery of unanticipated reserves or necessary to enhance
15 reclamation efforts or environmental protection";

16 On page eighty-six, by inserting a new subsection 3.35
17 to read as follows: 3.35. All grade measurements and
18 linear measurements in this rule shall be subject to a
19 tolerance of two percent (2%). All angles in this rule
20 shall be measured from the horizontal and shall be subject
21 to a tolerance of five percent (5%): *Provided, however,*
22 this allowable deviation from the approved plan does not
23 affect storage capacity and/or performance standards.

1 On page one hundred eight, subdivision 5.5.c., line
2 two, after the word "landowner", by striking the remainder
3 of the paragraph and inserting in lieu thereof the words
4 "requesting the permanent structures be left for
5 recreational or wildlife propagation purposes or for any
6 beneficial uses to the landowner";

7 On page one hundred twelve, subdivision 6.5.a., line
8 five, after the word "Sunday." by adding the following:
9 *Provided, however,* the Director may grant approval of a
10 request for Sunday blasting if the operator demonstrates to
11 the satisfaction of the Director that the blasting is
12 necessary and there has been an opportunity for a public
13 hearing.;

14 On page one hundred twenty-six, paragraph 9.2.i.2,
15 after the word "achieved" by inserting: An alternate
16 maximum or minimum soil pH may be approved based on the
17 optimum pH for the revegetation species.;

18 On page one hundred thirty, line one, paragraph
19 9.3.h.1., by striking out the paragraph in its entirety,
20 and inserting in lieu thereof: 9.3.h.1. The minimum
21 stocking rate of commercial tree species shall be in
22 accordance with the approved forest management plan
23 prepared by a registered professional forester. In no case

1 may the rate be less than four hundred fifty (450) stems
2 per acre of commercial tree species;

3 On page one hundred thirty, paragraph 9.3.h.2., by
4 striking out the paragraph in its entirety, and by
5 renumbering the subsequent paragraphs;

6 On page one hundred thirty, in renumbered paragraph
7 9.3.h.2., after the word "than", by striking out the words
8 "four hundred fifty (450)", and inserting in lieu thereof
9 "three hundred (300);" On page one hundred thirty, in
10 renumbered paragraph 9.3.h.2., after the word "acre", by
11 inserting the words "or the rate specified in the forest
12 management plan, whichever is greater,";

13 On page two hundred twenty-two, subdivision 14.11.e,
14 line 6, by striking out the word "operable" and by
15 inserting in lieu thereof "such condition that operations
16 could be resumed within sixty (60) days";

17 On page two hundred twenty-three, subdivision
18 14.11.f., line four, by striking out the word "operative",
19 and by inserting in lieu thereof the words "such condition
20 that the operations could be resumed within sixty (60)
21 days";

22 On page two hundred twenty-three, subdivision
23 14.11.f., line four, after the word "is", by inserting the

1 words "protected from unauthorized entry";

2 On page two hundred thirty-eight, subparagraph
3 14.15.b.6.A., line five, after the word "exceed", by
4 striking out the words "fifty (50) percent of the total
5 permit acreage, or four hundred (400) acres, whichever is
6 less, on operations which consist of at least three spreads
7 of equipment", and inserting in lieu thereof the words
8 "five hundred (500) acres on operations which consist of
9 multiple spreads of equipment";

10 On page two hundred thirty-nine, subsection 14.15.c.,
11 line three, after the word "regraded", by inserting the
12 words "and stabilized";

13 On page two hundred thirty-nine, subsection 14.15.c.,
14 line four, after the word "plan", by striking out the
15 "comma" and the remainder of the subparagraph, and
16 inserting in lieu thereof the words: The following shall
17 not be included in the calculation of disturbed area.;

18 On page two hundred forty, paragraph 14.15.c.2., line
19 seven, after the word "benches", by inserting the words
20 "without regard to like thickness";

21 On page two hundred forty, paragraph 14.15.c.5, line
22 two, after the word "graded", by inserting the words "with
23 material placed in a stable, controlled manner which will

1 not subsequently be moved".

2 (g) The legislative rule filed in the state register
3 on the twenty-ninth day of August, one thousand nine
4 hundred ninety-six, authorized under the authority of
5 section ten, article five, chapter twenty-two of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the twenty-
9 sixth day of November, one thousand nine hundred
10 ninety-six, relating to the division of environmental
11 protection (confidential information, 45 CSR 31), is
12 authorized.

13 (h) The legislative rule filed in the state register
14 on the ~~twenty-ninth~~ first day of August, one thousand nine
15 hundred ~~ninety-six~~ ninety-seven, authorized under the
16 authority of section ~~four~~ seven, article ~~five~~ one, chapter
17 twenty-two of this code, modified by the division of
18 environmental protection to meet the objections of the
19 legislative rule-making review committee and refiled in the
20 state register on the ~~sixteenth~~ second day of ~~January~~
21 December, one thousand nine hundred ninety-seven,
22 relating to the division of environmental protection (to
23 prevent and control air pollution from hazardous waste

1 treatment, storage or disposal facilities, 45 CSR 25), is
2 authorized.

3 (i) The legislative rule filed in the state register
4 on the fifth day of February, one thousand nine hundred
5 ninety-seven, authorized under the authority of section
6 three, article twenty-two, chapter twenty-two of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the twenty-
10 fifth day of February, one thousand nine hundred
11 ninety-seven, relating to the division of environmental
12 protection (voluntary remediation and redevelopment, 60 CSR
13 3), is authorized.

14 (j) That title sixty, series one of the code of state
15 rules be amended by deleting the current interpretative
16 rule for the office of environmental advocate and inserting
17 in lieu thereof the following legislative rule, to read as
18 follows:

19 "§61-10-1. General.

20 1.1. Scope. - This legislative rule governs and
21 controls the appointment and qualifications of the position
22 of Environmental Advocate within the Division of
23 Environmental Protection.

1 1.2. Authority - West Virginia Code §22-1-3, 22-1-3a,
2 22-20.

3 1.3. Filing Date -

4 1.4. Effective Date - July 1, 1997.

5 §61-10-2. Appointment, Salary and Qualifications.

6 2.1. Appointment. - The position of Environmental
7 Advocate will be a full-time position, will be appointed by
8 the Director, and will serve at the will and pleasure of
9 the Director of the Division of Environmental Protection in
10 accordance with the West Virginia Code §22-20-1.

11 2.2. Salary. - The salary of the position of
12 Environmental Advocate will be set by the Director and is
13 subject to future adjustments at the discretion of the
14 Director.

15 2.3. Qualifications. - The Director will receive or
16 solicit applications for the position of Environmental
17 Advocate from persons having the following minimum
18 qualifications:

19 2.3.a. A citizen and resident of the State of West
20 Virginia.

21 2.3.b. A graduate from an accredited college or
22 university with a four-year degree in a field of study

1 directly related to the qualifications, powers, and duties
2 of the position as set forth by the director.

3 2.3.c. A minimum of two years full-time or cumulative
4 experience in work directly related to environmental
5 protection, or other public service work or experience
6 which demonstrates the ability to carry out the powers and
7 duties of the position as set forth by the director.

8 2.3.d. A working familiarity with some of the legal
9 requirements and programmatic functions of the Division of
10 Environmental Protection.

11 2.3.e. A demonstrated ability to skillfully verbally
12 and by writing communicate in a public forum.

13 2.3.f. A demonstrated ability to use word processing
14 software for a computer and other necessary computer
15 skills as determined by the director.

16 2.3.g. A valid West Virginia driver's license.

17 **§61-10-3. Powers and Limitations -**

18 The Environmental Advocate will carry out the duties
19 of the position as set forth in this rule, and as
20 prescribed by the Director in accordance with the
21 following:

22 3.1. The Environmental Advocate will be guided in all
23 actions by the policy statement and the nine purposes set

1 forth in West Virginia Code §22-1-1 (b).

2 3.2. The Environmental Advocate may not in any
3 official capacity represent any person in, or file on
4 behalf of any person, legal or quasi-legal actions, either
5 in support of or opposed to the Division of Environmental
6 Protection without the expressed approval of the Director,
7 and under supervision of the Division of Environmental
8 Protection's General Counsel.

9 3.3. The Environmental Advocate may not in any
10 official capacity organize public campaigns in support of,
11 or in opposition to official positions taken by the
12 Division of Environmental Protection on environmental
13 matters, and will not in any official capacity actively
14 participate in any such organized campaign."

15 (k) The director of the division of environmental
16 protection is hereby authorized to propose for promulgation
17 an emergency rule to amend a current legislative rule
18 relating to monitoring of air quality (to prevent and
19 control particulate air pollution from manufacturing
20 process operation, 45 CSR 7).

21 (l) The legislative rule filed in the state register
22 on the eighteenth day of March, one thousand nine hundred
23 ninety-seven, relating to the division of environmental

1 protection (yard waste composting, 47 CSR 38E) is
2 authorized.

3

4 NOTE: The purpose of this bill is to authorize the
5 Division of Environmental Protection to promulgate a
6 legislative rule relating to the Prevention and Control of
7 Air Pollution From Hazardous Waste Treatment, Storage or
8 Disposal Facilities

9

10 Strike-throughs indicate language that would be
11 stricken from the present law, and underscoring indicates
12 new language that would be added.

Senate Bill No. 293

(By Senator(s) Ross, Anderson, Bowman,
Macnaughtan, Boley and Buckalew)

[Introduced January 30, 1998; referred to the
Committee on Natural Resources; and then to the
Committee on the Judiciary.]

10 A BILL to amend and reenact section one, article three,
11 chapter sixty-four of the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended, relating
13 to authorizing the division of environmental
14 protection to promulgate a legislative rule relating
15 to the prevention and control of air pollution from
16 hazardous waste treatment, storage or disposal
17 facilities.

18 *Be it enacted by the Legislature of West Virginia:*

19 That section one, article three, chapter sixty-four of
20 the code of West Virginia, one thousand nine hundred
21 thirty-one, as amended, be amended and reenacted, to read
22 as follows:

23 **ARTICLE 3. AUTHORIZATION FOR BUREAU OF ENVIRONMENT TO**

1 **PROMULGATE LEGISLATIVE RULES.**

2 §64-3-1. **Division of environmental protection.**

3 (a) The legislative rule filed in the state register
4 on the thirtieth day of August, one thousand nine hundred
5 ninety-six, authorized under the authority of section six,
6 article eighteen, chapter twenty-two of this code, relating
7 to the division of environmental protection (hazardous
8 waste management, 33 CSR 20), is authorized.

9 (b) The legislative rule filed in the state register
10 on the twenty-ninth day of August, one thousand nine
11 hundred ninety-six, authorized under the authority of
12 section four, article five, chapter twenty-two of this
13 code, relating to the division of environmental protection
14 (standards of performance for new stationary sources
15 pursuant to 40 CFR Part 60, 45 CSR 16), is authorized.

16 (c) The legislative rule filed in the state register
17 on the twenty-ninth day of August, one thousand nine
18 hundred ninety-six, authorized under the authority of
19 section four, article five, chapter twenty-two of this
20 code, relating to the division of environmental protection
21 (emission standards for hazardous air pollutants pursuant
22 to 40 CFR Part 63, 45 CSR 34), is authorized.

23 (d) The legislative rule filed in the state register

1 on the twenty-eighth day of August, one thousand nine
2 hundred ninety-six, authorized under the authority of
3 section six, article seventeen, chapter twenty-two of this
4 code, modified by the division of environmental protection
5 to meet the objections of the legislative rule-making
6 review committee and refiled in the state register on the
7 twenty-second day of October, one thousand nine hundred
8 ninety-six, relating to the division of environmental
9 protection (underground storage tank insurance trust fund,
10 33 CSR 32), is authorized.

11 (e) The legislative rule filed in the state register
12 on the twenty-ninth day of August, one thousand nine
13 hundred ninety-six, authorized under the authority of
14 section three, article one, chapter twenty-two of this
15 code, modified by the division of environmental protection
16 to meet the objections of the legislative rule-making
17 review committee and refiled in the state register on the
18 twentieth day of December, one thousand nine hundred
19 ninety-six, relating to the division of environmental
20 protection (WV/NPDES regulations for coal mining
21 facilities, 47 CSR 30), is authorized.

22 (f) The legislative rule filed in the state register
23 on the thirtieth day of August, one thousand nine hundred

1 ninety-six, authorized under the authority of section four,
2 article three, chapter twenty-two of this code, modified by
3 the division of environmental protection to meet the
4 objections of the legislative rule-making review committee
5 and refiled in the state register on the twenty-first day
6 of February, one thousand nine hundred ninety-seven,
7 relating to the division of environmental protection
8 (surface mining and reclamation regulations, 38 CSR 2), is
9 authorized, with the following amendments:

10 "On page three, subsection 2.4, by striking out the
11 words "Coal seams commonly associated with such minerals
12 may include, but are not limited to Waynesburg, Washington,
13 Freeport, Sewickley, Redstone, Pittsburgh, Kittanning, Elk
14 Lick, Peerless, No. 2 Gas, Upper Eagle, No. 5 Block and
15 Stockton Lewiston";

16 On page three, subsection 2.4, line eight, by striking
17 out the words "these seams are", and inserting in lieu
18 thereof the words "the seam is";

19 On page nine, subsection 2.43, line two, after the
20 word "highwall", by inserting the words "except in
21 operations where the entire upper horizon above the lowest
22 coal seam is proposed to be partly or entirely removed";

23 On page sixteen, subsection 2.95, line seven after

1 the "any", by inserting the word "substantial";

2 On page eighteen, subsection 2.108, line two, after
3 the word "stream." by adding the following: Examples
4 include wildlife ponds, settling basins and all ponds and
5 facilities or structures used for water treatment.;

6 On page nineteen, subsection 2.120, line three, by
7 striking the word "or" and inserting in lieu thereof the
8 word "and";

9 On page twenty-nine, subsection 3.2.e., after the word
10 "period" by striking the remainder of the subdivision
11 3.2.e.;

12 On page forty-nine, subsection 3.14.b.7., by striking
13 the entire paragraph;

14 On page forty-nine, subsection 3.14.b.8., by striking
15 the entire paragraph;

16 On page forty-nine, by renumbering the remaining
17 paragraphs;

18 On page fifty-one, subparagraph 3.14.b.14E, line one,
19 before the word "A", by inserting the words "If requested
20 by the Director";

21 On page fifty-one, subsection 3.14.b.15.B., by
22 striking the entire subparagraph, and inserting in lieu
23 thereof the following: 3.14.b.15.B. Surface water must be

1 diverted around or over the material by properly designed
2 and stabilized diversion channels which have been designed
3 using the best current technology to provide protection to
4 the environment or the health, welfare and safety of the
5 public. The channel shall be designed and constructed to
6 ensure stability of the remaining material, control
7 erosion, and minimize water infiltration into the remaining
8 material.;

9 On page seventy-two, subdivision 3.29.a, line five
10 after the word "IBR", by inserting the words "or where it
11 has been demonstrated to the satisfaction of the Director
12 that limited coal removal on areas immediately adjacent to
13 the existing permit is the only practical alternative to
14 recovery of unanticipated reserves or necessary to enhance
15 reclamation efforts or environmental protection";

16 On page eighty-six, by inserting a new subsection 3.35
17 to read as follows: 3.35. All grade measurements and
18 linear measurements in this rule shall be subject to a
19 tolerance of two percent (2%). All angles in this rule
20 shall be measured from the horizontal and shall be subject
21 to a tolerance of five percent (5%): *Provided, however,*
22 this allowable deviation from the approved plan does not
23 affect storage capacity and/or performance standards.

1 On page one hundred eight, subdivision 5.5.c., line
2 two, after the word "landowner", by striking the remainder
3 of the paragraph and inserting in lieu thereof the words
4 "requesting the permanent structures be left for
5 recreational or wildlife propagation purposes or for any
6 beneficial uses to the landowner";

7 On page one hundred twelve, subdivision 6.5.a., line
8 five, after the word "Sunday." by adding the following:
9 *Provided, however,* the Director may grant approval of a
10 request for Sunday blasting if the operator demonstrates to
11 the satisfaction of the Director that the blasting is
12 necessary and there has been an opportunity for a public
13 hearing.;

14 On page one hundred twenty-six, paragraph 9.2.i.2,
15 after the word "achieved" by inserting: An alternate
16 maximum or minimum soil pH may be approved based on the
17 optimum pH for the revegetation species.;

18 On page one hundred thirty, line one, paragraph
19 9.3.h.1., by striking out the paragraph in its entirety,
20 and inserting in lieu thereof: 9.3.h.1. The minimum
21 stocking rate of commercial tree species shall be in
22 accordance with the approved forest management plan
23 prepared by a registered professional forester. In no case

1 may the rate be less than four hundred fifty (450) stems
2 per acre of commercial tree species;

3 On page one hundred thirty, paragraph 9.3.h.2., by
4 striking out the paragraph in its entirety, and by
5 renumbering the subsequent paragraphs;

6 On page one hundred thirty, in renumbered paragraph
7 9.3.h.2., after the word "than", by striking out the words
8 "four hundred fifty (450)", and inserting in lieu thereof
9 "three hundred (300);" On page one hundred thirty, in
10 renumbered paragraph 9.3.h.2., after the word "acre", by
11 inserting the words "or the rate specified in the forest
12 management plan, whichever is greater,";

13 On page two hundred twenty-two, subdivision 14.11.e,
14 line 6, by striking out the word "operable" and by
15 inserting in lieu thereof "such condition that operations
16 could be resumed within sixty (60) days";

17 On page two hundred twenty-three, subdivision
18 14.11.f., line four, by striking out the word "operative",
19 and by inserting in lieu thereof the words "such condition
20 that the operations could be resumed within sixty (60)
21 days";

22 On page two hundred twenty-three, subdivision
23 14.11.f., line four, after the word "is", by inserting the

1 words "protected from unauthorized entry";

2 On page two hundred thirty-eight, subparagraph
3 14.15.b.6.A., line five, after the word "exceed", by
4 striking out the words "fifty (50) percent of the total
5 permit acreage, or four hundred (400) acres, whichever is
6 less, on operations which consist of at least three spreads
7 of equipment", and inserting in lieu thereof the words
8 "five hundred (500) acres on operations which consist of
9 multiple spreads of equipment";

10 On page two hundred thirty-nine, subsection 14.15.c.,
11 line three, after the word "regraded", by inserting the
12 words "and stabilized";

13 On page two hundred thirty-nine, subsection 14.15.c.,
14 line four, after the word "plan", by striking out the
15 "comma" and the remainder of the subparagraph, and
16 inserting in lieu thereof the words: The following shall
17 not be included in the calculation of disturbed area.;

18 On page two hundred forty, paragraph 14.15.c.2., line
19 seven, after the word "benches", by inserting the words
20 "without regard to like thickness";

21 On page two hundred forty, paragraph 14.15.c.5, line
22 two, after the word "graded", by inserting the words "with
23 material placed in a stable, controlled manner which will

1 not subsequently be moved".

2 (g) The legislative rule filed in the state register
3 on the twenty-ninth day of August, one thousand nine
4 hundred ninety-six, authorized under the authority of
5 section ten, article five, chapter twenty-two of this code,
6 modified by the division of environmental protection to
7 meet the objections of the legislative rule-making review
8 committee and refiled in the state register on the twenty-
9 sixth day of November, one thousand nine hundred
10 ninety-six, relating to the division of environmental
11 protection (confidential information, 45 CSR 31), is
12 authorized.

13 (h) The legislative rule filed in the state register
14 on the ~~twenty-ninth~~ first day of August, one thousand nine
15 hundred ~~ninety-six~~ ninety-seven, authorized under the
16 authority of section ~~four~~ seven, article ~~five~~ one, chapter
17 twenty-two of this code, modified by the division of
18 environmental protection to meet the objections of the
19 legislative rule-making review committee and refiled in the
20 state register on the ~~sixteenth~~ second day of ~~January~~
21 December, one thousand nine hundred ninety-seven,
22 relating to the division of environmental protection (to
23 prevent and control air pollution from hazardous waste

1 treatment, storage or disposal facilities, 45 CSR 25), is
2 authorized.

3 (i) The legislative rule filed in the state register
4 on the fifth day of February, one thousand nine hundred
5 ninety-seven, authorized under the authority of section
6 three, article twenty-two, chapter twenty-two of this code,
7 modified by the division of environmental protection to
8 meet the objections of the legislative rule-making review
9 committee and refiled in the state register on the twenty-
10 fifth day of February, one thousand nine hundred
11 ninety-seven, relating to the division of environmental
12 protection (voluntary remediation and redevelopment, 60 CSR
13 3), is authorized.

14 (j) That title sixty, series one of the code of state
15 rules be amended by deleting the current interpretative
16 rule for the office of environmental advocate and inserting
17 in lieu thereof the following legislative rule, to read as
18 follows:

19 **"§61-10-1. General.**

20 **1.1. Scope.** - This legislative rule governs and
21 controls the appointment and qualifications of the position
22 of Environmental Advocate within the Division of
23 Environmental Protection.

1 1.2. Authority - West Virginia Code §22-1-3, 22-1-3a,
2 22-20.

3 1.3. Filing Date -

4 1.4. Effective Date - July 1, 1997.

5 §61-10-2. Appointment, Salary and Qualifications.

6 2.1. Appointment. - The position of Environmental
7 Advocate will be a full-time position, will be appointed by
8 the Director, and will serve at the will and pleasure of
9 the Director of the Division of Environmental Protection in
10 accordance with the West Virginia Code §22-20-1.

11 2.2. Salary. - The salary of the position of
12 Environmental Advocate will be set by the Director and is
13 subject to future adjustments at the discretion of the
14 Director.

15 2.3. Qualifications. - The Director will receive or
16 solicit applications for the position of Environmental
17 Advocate from persons having the following minimum
18 qualifications:

19 2.3.a. A citizen and resident of the State of West
20 Virginia.

21 2.3.b. A graduate from an accredited college or
22 university with a four-year degree in a field of study

1 directly related to the qualifications, powers, and duties
2 of the position as set forth by the director.

3 **2.3.c.** A minimum of two years full-time or cumulative
4 experience in work directly related to environmental
5 protection, or other public service work or experience
6 which demonstrates the ability to carry out the powers and
7 duties of the position as set forth by the director.

8 **2.3.d.** A working familiarity with some of the legal
9 requirements and programmatic functions of the Division of
10 Environmental Protection.

11 **2.3.e.** A demonstrated ability to skillfully verbally
12 and by writing communicate in a public forum.

13 **2.3.f.** A demonstrated ability to use word processing
14 software for a computer and other necessary computer
15 skills as determined by the director.

16 **2.3.g.** A valid West Virginia driver's license.

17 **§61-10-3. Powers and Limitations -**

18 The Environmental Advocate will carry out the duties
19 of the position as set forth in this rule, and as
20 prescribed by the Director in accordance with the
21 following:

22 **3.1.** The Environmental Advocate will be guided in all
23 actions by the policy statement and the nine purposes set

1 forth in West Virginia Code §22-1-1 (b).

2 **3.2.** The Environmental Advocate may not in any
3 official capacity represent any person in, or file on
4 behalf of any person, legal or quasi-legal actions, either
5 in support of or opposed to the Division of Environmental
6 Protection without the expressed approval of the Director,
7 and under supervision of the Division of Environmental
8 Protection's General Counsel.

9 **3.3.** The Environmental Advocate may not in any
10 official capacity organize public campaigns in support of,
11 or in opposition to official positions taken by the
12 Division of Environmental Protection on environmental
13 matters, and will not in any official capacity actively
14 participate in any such organized campaign."

15 (k) The director of the division of environmental
16 protection is hereby authorized to propose for promulgation
17 an emergency rule to amend a current legislative rule
18 relating to monitoring of air quality (to prevent and
19 control particulate air pollution from manufacturing
20 process operation, 45 CSR 7).

21 (l) The legislative rule filed in the state register
22 on the eighteenth day of March, one thousand nine hundred
23 ninety-seven, relating to the division of environmental

1 protection (yard waste composting, 47 CSR 38E) is
2 authorized.

3

4 NOTE: The purpose of this bill is to authorize the
5 Division of Environmental Protection to promulgate a
6 legislative rule relating to the Prevention and Control of
7 Air Pollution From Hazardous Waste Treatment, Storage or
8 Disposal Facilities

9

10 Strike-throughs indicate language that would be
11 stricken from the present law, and underscoring indicates
12 new language that would be added.